

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROMANA LEYVA,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

No. 24-CV-1931 (VSB)

No. 19-CR-667-1 (VSB)

ORDER

VERNON S. BRODERICK, United States District Judge:

On March 14, 2024, Petitioner filed a pro se motion to vacate, set aside, or correct her sentence under 28 U.S.C. § 2255. (Cv. Doc. 1; Cr. Doc. 152.¹) After I ordered the Government to answer, (Cv. Doc. 5; Cr. Doc. 158), the Government filed a letter indicating that, since Petitioner’s § 2255 motion alleges she received ineffective assistance of counsel, the Government would need an affidavit from Petitioner’s attorney before responding to the claims raised in the motion. (Cr. Doc. 160.) Thus, on March 28, 2024, I ordered Petitioner to file a waiver of her attorney-client privilege within 60 days and ordered her counsel David K. Bertan to file an affidavit addressing the ineffective-assistance allegations 45 days thereafter. (Cv. Doc. 8; Cr. Docs. 161, 162.)

Petitioner signed her attorney-client privilege waiver on April 25, 2024; the waiver was filed on June 14, 2024. (Cv. Doc. 9.) Counsel’s affidavit was therefore due on July 29, 2024. The Court is aware that in connection with Petitioner’s direct appeal, Mr. Bertan submitted a letter under seal dated July 18, 2022 regarding the status of Petitioner’s legal representation. (Cr.

¹ Filings related to Petitioner’s § 2255 motion have been filed on both a civil docket, No. 24-CV-1931, and on the docket for Petitioner’s criminal case, No. 19-CR-667-1. Both cases are before me. The designations “Cv.” and “Cr.” precede the record citations to documents in the civil and criminal cases, respectively.

Sealed. Doc. 99.) Mr. Bertan has not, however, submitted an affidavit regarding Petitioner's allegations in her § 2255 motion. Accordingly, it is hereby:

ORDERED that, by November 1, 2024, attorney Bertan give sworn testimony, in the form of an affidavit, addressing the allegations of ineffective assistance of counsel in Petitioner's § 2255 motion.

IT IS FURTHER ORDERED that the Government shall file an answer or other pleadings in response to the motion within 60 days of the date that the affidavit of Counsel is made available to the Government.

The Clerk of Court is respectfully directed to send copies of this Order and the petition (Cv. Doc. 1; Cr. Doc. 152) by certified mail to David K. Bertan, 41 E 11th Street, 11th Floor, New York, NY 10003, and to send copies of the same to the email address for attorney Bertan listed on the criminal docket.

The Clerk of Court is also respectfully directed to mail a copy of this Order to pro se Plaintiff Romana Leyva, Register No. 55792-048, Victorville Camp FCI Medium I, PO Box 5300, Adelanto, CA 92301.

SO ORDERED.

Dated: October 2, 2024
New York, New York

A handwritten signature in black ink, reading "Vernon Broderick", written over a horizontal line.

Vernon S. Broderick
United States District Judge